ABDUL RASHID ABDUL HAMID

v.

KOPERASI MELAYU BERJAWATAN KERAJAAN NEGERI SEMBILAN BHD. & ANOR.

HIGH COURT MALAYA, SEREMBAN
MUSTAPHA HUSSAIN J
[ORIGINATING SUMMONS NO. 31-549-1986]
16 JULY 1987

ARBITRATION: *Case Stated - Section 22 (1)(a) Arbitration Act 1952 - Cooperative Society - Sale and purchase agreement between applicant and 1st respondent - Whether 1st respondent can vary the terms of the agreement - Section 29 Cooperative Societies Act 1948.*

The applicant applied by way of case stated on a point of law to the High Court for the determination of the Court whether the 1st respondent can vary the terms and conditions of a sale and purchase agreement 7 September 1979 entered into between the applicant and the 1st respondent. The 1st respondent purported to increase the purchase price of the house after the execution of the sale and purchase agreement by calling a meeting of its members and at the meeting it was agreed that the price was to be increased. The applicant denied that he had agreed to the increase in price and refused to sign the supplementary agreement relating to the increases in price.

The dispute was referred to the Director General of Co-operatives and finally it went for arbitration and it was decided to refer this matter to the High Court for determination.

Held:

[1] As the sale and purchase agreement did not contain a clause allowing for the increase in the Purchase price, it was clear that the 1st respondent had no right unilaterally to increase the Purchase Price.

[2] That nevertheless the 1st respondent can vary the terms of the sale and purchase agreement on the basis that as the 1st respondent is a co-operative society and the applicant is a member of it, the members of the co-operative society are liable to bear the loss suffered by the co-operative society and therefore the applicant is liable for the increase in the purchase price.

[The co-operative society can very the terms of the contract of sale.]

Case referred to:
Pemungut Hasil Tanah, Daerah Barat-daya, Pulau Pinang v. Ong Gaik Kee [1983] 2 MLJ 35

Legislation referred to:
Arbitration Act 1952, s. 22(1)(a)
Co-operative Societies Act 1948, s. 29

JUDGMENT

Mustapha Hussain J:

This is an application for the Arbitrator-cum-Chairman to state a case on a point of law to the High Court under s. 22(1)(a) of the Arbitration Act 1952. All parties agreed to this application and the case stated reads:

Whether, having regard to all the circumstances and in the events which have happened, the 1st respondent Co-operative Society qua Vendor, can vary the terms of a contract of sale of a house it executed with the applicant qua Purchaser.

The applicant is a member of the 1st respondent, i.e., Koperasi Melayu Berjawatan Kerajaan Negeri Sembilan Berhad. This Co-operative Society was formed in 1924 and its membership in 1977 stood at 6,268 members. Its main objects and activities are to give loans to members, minor scholarships to children, to members and the like. In 1977, the Koperasi decided to embark on a housing development project for its members, known as Taman Bukti, and the houses built were being sold to the members under a sale and purchase agreement. And so it came that the applicant and the Koperasi entered into such a sale and purchase agreement (Exhibit ARH1 annexed to the affidavit of the applicant). The purchase price as stated in the second schedule to the said agreement was RM41,897.20 and the purchaser was to pay a deposit of 10% i.e., RM4,189.72 and the 3rd schedule contained the method, time and amount of the balance.

In carrying out this housing project, the Koperasi ran into difficulties with its contractors and at the same time the prices of materials went up. All these resulted in additional expenditure and the Koperasi was forced to increase the prices of the houses. The Koperasi called for a meeting of its members and it was agreed to increase the price. The applicant herein denied having agreed to the increase in the price. The Koperasi increased the price of the house from the original RM41,897.20 to RM55,223.20. The applicant who had not agreed to the increase, objected to this increase of RM13,326 and refused to sign the supplementary agreement relating to the increase. The dispute was then referred to the Director General of Co-operatives and finally it went for arbitration.

At the hearing before the Arbitrator, there arose this question of law and it was then decided to state this question to the High Court for determination.

Now, the question that was stated used the word “qua Vendor” and “qua Purchaser” and a full consideration of the agreement is therefore necessary. The agreement dated 7 September 1979 in its preamble used the word “syarikat” and also the word “vendor” in describing the Koperasi. The applicant here was described as “purchaser”. In Clause 1 of the agreement, it clearly stated “.. at the purchase price specified in the second schedule hereto, subject to the terms and conditions and stipulations herein contained.”

Is there then, anywhere in the agreement any provision to allow the vendor to increase the price however justified such increase may be?

There is nothing mentioned anywhere in the agreement that in the event of any increase in price of materials or increase in the costs of the contractors, the vendor or the syarikat can apportion the extra costs so incurred onto the purchaser. Unless there is a clause to that effect or a clause stating that the vendor (or syarikat) can increase the price after having obtained the approval or consensus of its members at a general meeting, it is clear the vendor has no right unilaterally to increase the price; no matter how justified the case may be.

The agreement entered into between the applicant and the 1st respondent koperasi is a solemn agreement whereby the parties have agreed to the terms and conditions stated therein. The parties concerned are bound by that agreement. This is quite clear law, as between a vendor and a purchaser.

The next point is, as between a member of a co-operative society and his society, can the society with the approval of its members or by majority decision thereof, increase the price?

A co-operative society is an association of people of a certain class getting together and forming a body to carry out some activities for the benefit of all. In our case here, it is a body of government servants in the State of Negeri Sembilan and it is one of the objectives of the koperasi to provide a house for every member of the koperasi. By its very nature, it is not a profit-making organisation and if it embarks on a business venture like buying a piece of land and selling at a profit, then the profits are distributed among its members. If the members are entitled to share the profits, then by necessary implication, if the society suffers a loss, the members must bear the loss. This is emphasised by s. 29 of the Co-operative Societies Act 1948 and defines the liability of a past member for the debt of a registered society.

What about the rules then? The 1st respondent co-operative society called for a meeting of its members on 25 September 1983 when it was agreed to the increase in the price due to the problems faced by the society with the contractor and the high cost of materials. The meeting approved the increase in price. The question here is whether the applicant was bound by this decision of the meeting.

The answer to this question is in the affirmative. This is because of the very nature of the concept of co-operative societies. It is akin to a family organisation where through the joint efforts of all, all share equally not only fruits of their joint labour but if there are losses, all have to share the burden equally. As in our case here, the prices have gone up. The problems faced by the koperasi with its contractors have brought about additional expenses. Surely all these extra costs have to be borne by the members of the koperasi. “Berat sama di pikul ringan sama di jinjing”.

The point of law posed to the Court, with regard to and after considering **“all the circumstances and the events which have happened”**, the co-operative society can vary the terms of a contract of sale.

Also found at [1988] 2 CLJ 439